IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

February 22, 1985

You request a ruling on the application of the sales tax to the operations of two Massachusetts corporations, ("Company A") and ("Company B").

Company A fabricates a product designed to enable individuals to obtain a tan without going into the sun ("tanning booths" or "booths"). The cost of each tanning booth is approximately $2,000, including labor, materials, and overhead, and Company A sells each booth to Company B at cost.

Company B has developed widespread market recognition and acceptance for its company name in the field of suntanning salon operations and is in the business of franchising its goodwill and related marketing services. For this purpose Company B has drawn up a contract document titled "Standard Franchise Agreement" ("franchise contract") which is offered to any person who is interested in setting up a suntanning salon using Company B's name ("franchisee"). The franchisee pays a franchise fee of between approximately $30,000 and $50,000 (depending on the number of booths) plus an annual royalty fee. In return, Company B delivers and transfers to the franchisee title to and possession of between three and ten tanning booths and other tangible personal property used in the operation of such enterprise. In addition, Company B authorizes the franchisee to use the Company B name, trademark, logo, signs, plans, methods, systems, and sales tools; provides assistance in selection of office and salon space and lease negotiations; provides training in the operation of the business; provides periodic bulletins and other information covering trends and developments; and provides marketing assistance and advertising. Company

B does not provide a separate bill of sale or separate statement of the cost of the tanning booths or the other tangible personal property.

Company A's purchase of the materials used to manufacture the tanning booths are exempt from the sales tax, since they become a component part of the property which is then resold to Company B. (G.L. c. 64H, § 6(r)). Therefore, Company A can give an exempt use certificate to its suppliers.

Company A's sale of the completed booths to Company B is also exempt from the sales tax, since this sale is made to Company B for the purpose of resale to Company B's franchisees in the regular course of Company B's business. (G.L. c. 64H, § 1(13)). Company A should therefore take a resale certificate from Company B, to avoid the presumption that this is a sale at retail subject to tax.

Company B's franchise agreements do not qualify as personal service transactions involving sales as an inconsequential element. (G.L. c. 64H, § 1(13)(c)). The value of the tanning booths and other property is greater than ten percent of the franchise fee, and therefore does not meet the general guideline for the term "inconsequential" set forth in the applicable regulation. (830 CMR 64H.03(1)). Furthermore, the sale of the booths and other property is a consequential and significant element of the franchise. (Browning-Ferris Industries v. State Tax Commission, 375 Mass. 326 (1978)).

Since the sales price is the total amount paid by a purchaser to a vendor as consideration for a retail sale (G.L. c. 64H, § 1(14)), the sales tax applies to the total amount of the franchise fee.

The regulations provide that amounts paid for services which are not a part of the sale are not subject to the sales tax if stated separately. A copy of 830 CMR 64H.03 is enclosed. Therefore, if Company B provides a separate statement of the amount to be paid by the franchisee for the booths and other property, the sales tax will apply only to the amount so stated.

Very truly yours,

James S. Nelson

Commissioner of Revenue

IAJ:JSO:mf

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